

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE ELADIO CASTRO,

Plaintiff,

– against –

SANTIAGO QUEZADA and EUROS EL TINA
RESTAURANT AND BILLIARDS CORP.

d/b/a EL TINA LOUNGE,

Defendants.

ORDER

21 Civ. 3445 (ER)

Ramos, D.J.:

This case was removed on April 19, 2021. Doc. 1. The attached Complaint brings state law claims for breach of contract and unjust enrichment, and indicates that Plaintiff and at least one defendant are citizens of New York. *See* Doc. 1-1 at ¶¶ 5–7, 35–48. The Court is therefore without diversity jurisdiction over this case. *See Cushing v. Moore*, 970 F.2d 1103, 1106 (2d Cir. 1992) (complete diversity was lacking when both plaintiffs and defendants were citizens of New York). Nor have the Defendants shown any other basis for original jurisdiction.

While Defendants reference RICO claims brought in a different case, *Pizarro v. Euros El Tina Restaurant Lounge and Billiards Corp.*, 20 Civ. 5783 (AKH), this would at best provide a potential basis for supplemental jurisdiction in the event these cases were consolidated.

However, “supplemental jurisdiction cannot supply the original jurisdiction needed to remove a state court complaint under 28 U.S.C. § 1441(a) — ‘even if the action which a defendant seeks to remove is related to another action over which the federal district court already has subject-matter jurisdiction’” *Allstate Ins. Co. v. Electrolux Home Prods., Inc.*, No. 16 Civ. 58 (LLS), 2016 WL 3561796, at *1 (S.D.N.Y. Jan. 8, 2016) (internal citations and quotation marks omitted); *see also* 16 Moore’s Federal Practice § 107.14[1] (3d ed. 2015) (“The supplemental

jurisdiction statute is not itself a source of original jurisdiction and therefore is not a proper basis for removal.”) (footnotes omitted).

This action was therefore improperly removed and must be remanded to state court. *See Allstate Ins. Co.*, 2016 WL 3561796, at *1. The Clerk of Court is respectfully directed to terminate this case and remand it to state court.

It is SO ORDERED.

Dated: April 29, 2021
New York, New York



Edgardo Ramos, U.S.D.J.